

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROYAL PIONEER PAPER BOX :
MANUFACTURING COMPANY :
 :
v. : MISC. NO. 96-310
 :
UNITED PAPER WORKERS :
INTERNATIONAL UNION, LOCAL 286 :

MEMORANDUM AND ORDER

BECHTLE, J.

JUNE 5, 1997

Presently before the court are United Paper Workers International Union's (the "Union") motions to dismiss and for summary judgment and Royal Pioneer Paper Box Manufacturing Company's (the "Company") motion to vacate the arbitrator's award, and the responses thereto. For the following reasons, the court will deny the motion to dismiss, deny the motion to vacate, and grant the motion for summary judgment.

I. BACKGROUND

This action arises out of an employment contract dispute. The Company and the Union are parties to a collective bargaining agreement (the "Agreement") that provides for arbitration of grievances. Prior to March 1994, the Company operated gluing machines at its plant with both an operator and a feeder/take-off person. These workers were each responsible for the operation of several machines, and moved from machine to machine. In March 1994, the Company changed the duties of these positions, and created a Feeder/Operator position in which one worker was

responsible for performing both jobs on the same machine. The Feeder/Take Off position duties were changed to Take Off positions only. (Arb. Rept. 12/23/94 at 3.) The employees placed in the new positions believed they were entitled to a pay increase, and the Union filed grievances on their behalf.

The parties were unable to resolve the dispute and, on September 20, 1994, a hearing was held before arbitrator Robert Kyler ("Kyler"). He ordered the parties to negotiate an appropriate rate of pay. (Arb. Rept. 12/23/94 at 4-5.) The parties were unable to reach an agreement, and on September 21, 1995, they again appeared before Kyler. On February 19, 1996 he ruled that an increase in pay for both of the new job classifications was appropriate, and ordered an across the board pay increase of sixty-five cents per hour, retroactive to March, 1994 when the classifications were changed. Id. at 3-4.

On March 1, 1996, the Company asked Kyler to reconsider and clarify the award. On March 19, 1996, the Company filed a motion with this court requesting vacation of the award because it exceeds the arbitrator's power and was so imperfectly executed that a mutual, final, and definite award upon the issue was not awarded. (Pet'r's Mem. Vacate Award at 8.) In an attempt to resolve the dispute, the parties agreed to let the arbitrator clarify the award. On May 1, 1996, Kyler ordered the parties to bargain to determine the appropriate rate of pay, and ruled that if the parties could not reach agreement within sixty days, he would issue a binding determination of the appropriate rate of pay. (Arb. Order 5/1/96.)

The parties did not reach an agreement. Kyler's final award ruled that twenty employees listed by name were entitled to a pay increase of thirty-five cents per hour for all hours worked, retroactive to March 1994. (Arb. Award 11/20/96.)

On January 7, 1997, the Union filed a motion to dismiss, arguing that the court lacks subject matter jurisdiction under the Federal Arbitration Act, 9 U.S.C. § 1 et seq. ("FAA") because it is inapplicable to appeals of labor arbitration awards. On January 29, 1997, the Company filed a response. On March 11, 1997, the court granted the Company's request for leave to amend its motion to vacate in order to add 29 U.S.C. § 185¹ as a basis for the court's jurisdiction. On May 16, 1997, the Union filed a motion for summary judgment. On May 28, 1997, the Company filed a response. For the following reasons, the court will deny the motion to dismiss and the motion to vacate the award, and will grant the motion for summary judgment.

II. DISCUSSION

A. Motion to Dismiss

The FAA governs disputes arising out of maritime and commercial contracts that are subject to valid arbitration agreements. 9 U.S.C. § 2. In the event that an arbitrator exceeds his or her powers, the FAA authorizes parties to the arbitration to appeal the award to the United States District

¹ This section provides that the United States District Courts have jurisdiction over actions by and against labor organizations.

Court. 9 U.S.C. § 10. However, the FAA excludes from its coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce."² 9 U.S.C. § 1.

The Company cites Tenney Engineering v. United Electrical Radio & Machine Workers of America, 207 F.2d 450, 453 (3d Cir. 1953), in support of its contention that the language of Section 1 does not divest the court of jurisdiction over this case under the FAA. In Tenney, a collective bargaining contract dispute, the United States Court of Appeals for the Third Circuit interpreted Section 1 to exclude only those employees engaged directly in interstate commerce, such as railroad workers, interstate drivers, and ship employees. In this case, the employees produce goods for subsequent sale in interstate commerce, and do not work directly in interstate commerce. Accordingly, under Tenney, the FAA would apply because the employees are not a "class of workers engaged [directly] in foreign or interstate commerce."

Since Tenney, the Third Circuit has held that "the Federal Arbitration Act is inapplicable to appeals from labor arbitration awards due to the exclusion of 'contracts of employment.'" Ludwig Honold Mfg. Co. v. Fletcher, 405 F.2d 1123, 1127 & n.18

² This exception applies to the FAA in its entirety. Amalgamated Ass'n of Street Elec., Ry. & Motorcoach Empl. of Am. Local 1210 v. Pennsylvania Greyhound Lines, Inc., 192 F.2d 310 (3d Cir. 1951).

(3d Cir. 1969)³ (citing Amalgamated Ass'n of Street Elec., Ry. & Motorcoach Empl. of Am. Local 1210 v. Pennsylvania Greyhound Lines, Inc., 192 F.2d 310 (3d Cir. 1951)). The Ludwig employees were not employed directly in interstate commerce. It appears that the Amalgamated employees were bus drivers; however, the court did not address the issue and did not rely on this fact in its decision.

Twenty-four years after the Third Circuit decided Tenney, the Supreme Court of the United States decided United Paperworkers Int'l v. Misco, Inc., 484 U.S. 29 (1987). Misco was an appeal of a collective bargaining contract dispute that concerned an employee whose position was similar to those in the instant case: a machine operator producing goods that would be shipped in interstate commerce. Id. at 32. In Misco, the Court stated that the FAA did not apply because the case concerned a "contract of employment of . . . workers engaged in foreign or interstate commerce." Id. at 40 n.9. It also stated that federal courts may look to the FAA for guidance in labor arbitration cases governed by 29 U.S.C § 185. Id.

On April 3, 1997, the Third Circuit decided Great Western Mortgage Co. v. Peacock, 110 F.3d 222 (3d Cir. 1997), which relied upon and appears to reaffirm Tenney. In Great Western, the court held that because Peacock was not employed directly in

³ In Ludwig, although the court found the FAA inapplicable, it found it appropriate to look to the FAA for guidance in determining the issues involved. Ludwig, 405 F.2d at 1127.

interstate commerce, she was not in the class of workers excluded by Section 1 of the FAA, and the FAA therefore applied. However, Great Western did not involve a dispute over work conditions bargained for in a collective bargaining agreement. Instead, the question before the court was whether an employee could be forced to arbitrate a sexual harassment claim pursuant to an arbitration agreement signed as a condition of her employment.

This court believes that Misco is controlling law in this case and that the Third Circuit would so rule if presented with these facts. Accordingly, the court concludes that it may not exercise jurisdiction pursuant to 9 U.S.C. § 10. However, it may exercise jurisdiction pursuant to 29 U.S.C. § 185, and will therefore deny the relief sought in the Union's motion.⁴

B. Motion to Vacate Arbitrator's Award

1. Standard and Scope of Review

Parties to an agreement to arbitrate have contracted to have disputes settled by an arbitrator rather than a judge. It is the arbitrator's factfinding and contract interpretation to which they have submitted. Therefore, a reviewing court must accord a high level of deference to labor arbitral awards because to permit plenary review by a court would render them meaningless

⁴ The Company also cites Matteson v. Ryder Sys., Inc., 99 F.3d 108, 113 (3d Cir. 1996), in its subsequent response to the Union's motion for summary judgment and notes that the court relies upon the FAA. The court does not disagree and will rely upon the FAA for guidance as well. See Misco, 484 U.S. at 40. It is the assertion that jurisdiction is based upon the FAA with which the court disagrees.

and undermine the congressional policy of promoting speedy, efficient, and inexpensive resolution of labor disputes. Misco, 484 U.S. at 37-38; United Steelworkers of Am. v. Enterprise Wheel and Car Corp., 363 U.S. 593, 596 (1960); Matteson v. Ryder Sys., Inc., 99 F.3d 108, 113 (3d Cir. 1996).

There are a limited number of reasons for which a reviewing court may vacate an arbitral award. Misco, 484 U.S. at 29; Enterprise, 363 U.S. at 596. Two such reasons are when the arbitrator exceeds his power or so imperfectly executes them that a mutual, final, and definite award upon the subject matter submitted was not made. 9 U.S.C. § 10(a)(4).

The court may not simply "rubber stamp" the arbitrator's decision. Matteson, 99 F.3d at 113. As long as the award "draws its essence" from the collective bargaining contract, it must be upheld. Id. at 36. An award draws its essence from the collective bargaining agreement if "the interpretation can in any rational way be derived from the agreement, viewed in light of its language, its context, and other indicia of the parties intention." Tanoma Mining Co. v. United Mine Workers Local 1269, 896 F.2d 745, 748 (3d Cir. 1990). The court may disturb an award only if it manifest disregard of the agreement, totally unsupported by principles of contract construction and the law of shop. Ludwig, 405 F.2d at 1128.

2. Exceeding the Arbitrator's Power

The Company argues that the arbitrator exceeded his power in three ways: (1) granting a wage increase during the

first four months of the classification change; (2) granting a wage increase during a period set aside for negotiation, and (3) basing his award upon an incorrect finding that the parties agreed that the positions were more laborious and stressing, a position that the Company did not take. (Pet'r's Mem. Vacate Award at 3.) Thus, because he did not have authority granted by the Agreement or the parties submissions to rule as he did, the Company contends that the award should be vacated. The court disagrees.

The Agreement attempts to provide for the timely resolution of disputes without resorting to the courts. In furtherance of that goal, it provides for the binding arbitration of unresolved disputes,⁵ and grants the arbitrator broad power to "determine the meaning and application of and compliance with the provisions of [the] Agreement." The only limit to the arbitrator's power is that he does "not have jurisdiction or authority to change or add provisions of th[e] Agreement." (Agmt. Art. VIII.) Thus, in any dispute arising under the Agreement, the arbitrator will have nearly unlimited power to fashion an award.

The issues presented to the arbitrator were:

⁵ Specifically, Article VII provides that all differences that "arise in the plant between the Company and the Union" shall be referred to the grievance and arbitration procedure. It also provides that if the parties are unable to voluntarily solve the dispute it will be arbitrated before a neutral arbitrator chosen by the Company and the Union.

"[whether] the employer violate[d] Article I, Section 2(b) of the collective bargaining agreement by changing the manner in which an operator and a feeder/takeoff person carried out their responsibilities in the gluing department," (Arb. Rept. 12/23/94 at 1.), and "[whether] the Feeder/Operator classification and the Take-Off classification [are] entitled to more pay" (Arb. Rept. 2/19/96 at 1.) After he found that the employees were entitled to more pay, the arbitrator ordered the parties to negotiate. The parties could not agree and again sought the arbitrator's advice in determining an amount.

The Agreement provides that the Company has the exclusive right to create new job classifications and/or change the duties of existing jobs and, in such cases, the right to unilaterally establish the initial wage rate. (Agmt. Art. I, § 2(b).) However, it also provides that after four months the parties will negotiate a proper rate of pay at the Union's request. Id. That section is subject to the Agreement's grievance and arbitration provisions which permit submission of unresolved disputes to binding arbitration. (Agmt. Art. VIII § 1.)⁶ The Company argues that the arbitrator exceeded his power in three ways.

(a) Wage Increase During the First Four Months

⁶ The parties do not contest that this procedure was proper or that the issues were properly before the arbitrator, the Company argues only that the arbitrator's award was defective.

The Company first argues that the arbitrator's finding constituted a wage increase during the first four months, a power that is reserved for the Company in the Agreement. The Agreement provides that the Company establishes the initial rate which may be negotiated after four months. It does not prohibit a retroactive change in the rate. Therefore, the court finds that the arbitrator did not exceed his power in this regard.

(b) Wage Increase During Negotiation Period

The Company's second argument is that the arbitrator exceeded his power by granting a raise during a period set aside for negotiation. The Agreement does not provide that a wage increase cannot be granted during negotiation. Further, there is no evidence that the parties directed the arbitrator not to issue a ruling affecting the negotiation period. The court does not find that the arbitrator exceeded his power in this regard.

(c) The Arbitrator's Findings of Fact

The Company's third argument is that the arbitrator exceeded his power by basing the pay increase on a finding that the parties agreed that the new position was more laborious than the previous positions, a fact to which the Company did not agree. (Pet'r's Mem. Vacate Award at 3.) This court does not sit in review of claims of factual or legal error made by an arbitrator as an appellate court does in reviewing decisions of lower courts. Misco, 108 S. Ct. at 370-71; Tanoma Mining Co., 869 F.2d at 749. The parties contracted for the arbitrator's findings of law and fact and the court may not disturb those

findings unless they are in manifest disregard of the Agreement and do not draw their essence from the agreement. The court finds that neither has been shown here, and finds that the arbitrator did not exceed his power.

3. Imperfect Execution

The Company also argues that the award was imperfectly executed and is ambiguous because it does not explain how to factor the wage increases. (Pet'r's Mem. Vacate Award at 3.) The court disagrees.

The final award states that the named employees "shall receive an increase of thirty-five cents (\$0.35) per hour, for all hours worked, retroactive to March, 1994." This order is clear and precise. Even if the court found that it was ambiguous, the law is clear that it cannot vacate the award on this ground. See Steelworkers, 363 U.S. at 598; Roberts & Schaefer Co. v. United Mine Workers Local 1846, 812 F.2d 883, 885 (3d Cir. 1987).

The award does not violate any provision of the Agreement. Each ruling was a direct answer to the issues presented. The award clearly draws its essence from the Agreement. Because there are no issues of material fact and the Union is entitled to summary judgment as a matter of law, the court will grant the Union's motion.

4. Attorney's Fees

The Union also requests attorney's fees because the Company has refused to abide by the arbitrator's decision without

justification. (Mem. Supp. Summ. J. at 15.) The court disagrees with this characterization of the Company's actions and will deny the request.

III. CONCLUSION

For the foregoing reasons, the court will deny the Company's motion to vacate and the Union's motion to dismiss and will grant the Union's motion for summary judgment.

An appropriate Order follows.

